

REMARKS

Reconsideration of this application in light of the following remarks is requested.

Claims 1-36 were originally filed in the present application. Claims 34-36 were subsequently cancelled without prejudice or disclaimer in response to a restriction requirement.

Claims 7-15 and 24-27 were previously withdrawn from consideration in response to an election requirement. However, these claims are now under consideration because the Examiner has withdrawn the election requirement.

The amendment which accompanied the subsequent Request for Continued Examination added claims 37-39.

No claims are currently added or canceled in the present paper. Consequently, claims 1-33 and 37-39 remain pending and under consideration.

Applicants also note with appreciation the Examiner's indication that claims 37-39 have been allowed.

Rejections under 35 U.S.C. §112

The Examiner has rejected claims 1-33 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. However, it is believed that the present amendments to claim 1 overcome this rejection. Accordingly, Applicants respectfully request the Examiner withdraw the rejection.

Rejections under 35 U.S.C. §102

Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2004/0157457 to Xu, et al. ("Xu"). However, the PTO provides in MPEP §2131 that, to anticipate a claim, a reference must teach every element of the claim. Therefore, to sustain this rejection with respect to claim 1, Xu must contain all of the above claimed elements of the claim. However, Xu does not disclose depositing a conformal polymer

layer on a substrate and a patterned feature form on the substrate, and also does not disclose forming an insulating layer on polymer spacers formed from the polymer layer, as recited in claim 1. Consequently, the §102 rejection of claim 1 is not supported by Xu. Accordingly, Applicants respectfully request the Examiner withdraw the §102 rejection of claim 1 and its dependent claims.

Rejections Under 35 U.S.C. §103

Several claims depending from claim 1 were also rejected under 35 U.S.C. §103 as being unpatentable in view of Xu. Applicants traverses this rejection on the grounds that Xu is defective in establishing a *prima facie* case of obviousness with respect to claim 1.

As the PTO recognizes in MPEP §2142:

... The Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

It is submitted that, in the present case, the Examiner has not factually supported a *prima facie* case of obviousness for the following, mutually exclusive, reasons.

1. Even When Combined, the References Do Not Teach the Claimed Subject Matter

As provided in 35 U.S.C. §103:

A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, in the context of claim 1, Xu fails to teach depositing a conformal polymer layer on a substrate and a patterned feature form on the substrate, and also fails to teach forming an insulating layer on polymer spacers formed from the polymer layer, as described above. Therefore, it is impossible for Xu to render obvious the subject matter of claim 1, as a whole, and the explicit terms of §103 cannot be met. Accordingly, Applicants respectfully request the Examiner withdraw the §103 rejection with respect to the claims depending from claim 1.

2. Prior Art That Teaches Away From the Claimed Invention Cannot be Used to Establish Obviousness

Xu teaches forming the spacer material layer 1215 on the substrate 1200 and the gate 1210, and subsequently forming the polymer film 1220 on the spacer material layer 1215. Thus, Xu clearly teaches away from forming the polymer film 1220 on the substrate 1200 and the gate 1210. Consequently, Xu explicitly teaches away from claim 1 of the present application.

Thus, for this reason alone, the Examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met with respect to claim 1. Accordingly, Applicants respectfully request the Examiner withdraw the §103 rejection with respect to the claims depending from claim 1.

Conclusion

All matters set forth in the Office Action have been addressed. Accordingly, it is believed that all claims are in condition for allowance. Favorable consideration and an early indication of allowability are respectfully requested.

Should the Examiner deem that an interview with Applicants' undersigned attorney would expedite consideration, the Examiner is invited to call the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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Dated: _____

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Document No.: H-631893.1

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Bonnie Boyle

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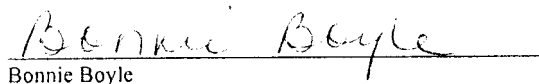
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